IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 26 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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M/S. MARUTI CHEMICALS - Petitioner(s)
Versus
HARIHAR CHEM LIMITED - Respondent(s)

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Appearance :
MR PAVAN S GODIAWALA for Petitioner(s) : 1,
MR BHAVESH B CHOKSHI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 11/12/2007

ORAL JUDGMENT

1. The petitioner, namely, M/s. Maruti Chemicals, sole proprietary concern of Shri Babubhai P. Patel has filed this winding up

petition against the respondent Company under the provisions of the companies Act, 1956.

2. This Court has issued notice on 2.2.2007. Mr. Bhavesh Chokshi, learned advocate appears on behalf of the respondent Company. The petition was admitted and order of advertisement was passed on 23.4.2007 directing the petitioner Company to advertise the notice of admission of petition in two newspapers, namely, “Indian Express” (English daily) and “Divya Bhaskar” (Gujarati daily), both Ahmedabad editions. Publication in Government Gazette was dispensed with.

3. Pursuant to the said order, the advertisement was published in two newspapers and affidavit to this effect was filed on 15.5.2007. Alongwith the said affidavit newspaper cuttings were also produced on the record of this petition.

4. Mr. Pavan Godiawala, learned advocate appearing for the petitioner has submitted that the petitioner is engaged in the business of dealing of pigment powder, Alfa Blue, CPC Blue Chemicals since long. The petitioner use to purchase since 2003 Alfa

Blue and CPC Blue Chemicals from the respondent Company and the payments were made and the accounts were cleared. He has further submitted that since 2005 the Company was not in a position to cope up with the orders placed by the petitioner due to various financial problems, more particularly due to disturbance in working capital cycle and requested the petitioner to advance amount to the tune of Rs.3,50,000/- to enable the Company to supply goods, namely, Alfa Blue and CPC Blue for the quantities of 1000 Kgs of Alfa Blue for Rs.230/- per kg and 800 Kgs of CPC Blue for Rs.150 per kg to the petitioner before starting of Diwali Festival in the year 2006. Due to cordial relations with the respondent company, the petitioner agreed to advance on the said mutual understanding. The petitioner was in urgent need of the aforesaid goods to meet with the demand of various buyers before Diwali, which facts were known to the respondent Company and the Company has assured and promised to supply the aforesaid quantity of goods for which advance was made by the petitioner Company. The respondent Company assured on or before the last week of October, 2006, to supply the goods, thereafter the respondent Company started giving excuses about short of

supply of raw materials, labour problems and after Diwali Festival, the respondent Company has not even bothered to respond to the petitioner.

5. Mr. Pavan Godiawala has further submitted that the petitioner has issued statutory notice on the respondent Company through his advocate on 18.11.2006 which was duly served on the respondent Company at its registered office on 21.11.2006, but the respondent company has failed and neglected to discharge its liability. He has further submitted that the respondent Company even after receipt of the said notice had not discharged its liability which it owes to the petitioner and had tendered reply to the statutory notice dated 23.11.2006, and has audacity to state that the petitioner should bear with the Company for few years. The respondent company was unable to pay its debt and also neglected to make the payment. The respondent company was facing heavy financial crises and upon the inquiry made by the petitioner, the respondent Company has stopped its business activities and lost its financial substratum. Mr. Godiawala has further submitted that even at the time of admission of this petition these facts were recorded in the order passed

by this Court on 23.4.2007. Today also there is no change in the position of the respondent company and not a single rupee has been paid to the petitioner. Mr. Godiawala has, therefore, submitted that the order of winding up be passed against the respondent Company.

6. Mr. Bhavesh Chokshi, learned advocate appearing for the respondent company has reiterated his submissions. He has expressed his inability to pursue this petition as despite its best efforts the Company could not make any arrangement for payment of the amount due to the petitioner. Since the liability is not in dispute, there is no ground available with him to resist this petition.

7. Having regard to the facts and circumstances of the case and considering the averments made in the petition as well as the earlier order passed by this Court on 23.4.2007 at the time of passing of order of admission and advertisement, the Court is of the view that the respondent company has failed and neglected to discharge its liability towards the petitioner. The respondent company has lost its financial

substratum. The business activities of respondent Company have come to standstill and there is possibility of starting of business activities of the respondent Company. The respondent company is, therefore, required to be wound up under the provisions of the companies Act, 1956. Accordingly, the respondent Company is hereby ordered to be wound up. The Official Liquidator attached to this Court is hereby appointed as the Liquidator of the Company and he is directed to take charge of all the assets and properties of the Company. He is directed to take possession of the properties of the Company after giving due intimation to the Ex-directors as well as secured creditors if any.

8. Compliance report be filed with the Court after taking possession of the properties of the Company.

9. This petition is accordingly disposed off without any order as to costs.

(K. A. PUJ, J.)

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